

**In the United States Court of Appeals
for the Ninth Circuit**

No. 24-1783

MISTY SNOW; DANA BOZIAN; EMILY VO;
KATIE CAMPBELL; CECELIA GARAY;
CELESTE HAMILTON;
STEPHANIE RICKENBAKER;
ANGELA CARNAGHI; JENNIFER EZZIO;
JAIME GOOCH; TRACY MOUND; JUSTIN HANSEN;
ELISABETH SKIBBA,
PLAINTIFFS-APPELLANTS

v.

ALIGN TECHNOLOGY, INC.,
DEFENDANT-APPELLEE

JOINT MOTION FOR LIMITED REMAND

Pursuant to Federal Rule of Appellate Procedure 27, appellants Misty Snow, Dana Bozian, Emily Vo, Katie Campbell, Cecelia Garay, Celeste Hamilton, Stephanie Rickenbaker, Angela Carnaghi, Jennifer Ezzio, Jaime Gooch, Tracy Mound, Justin Hansen, and Elisabeth Skibba, and appellee Align Technology, Inc., hereby move for a limited remand to the district court to correct the judgment under Federal Rule of Civil Procedure 60(a) so that it complies with Federal Rule of Civil Procedure 23(c)(3).

Federal Rule of Civil Procedure 23(c)(3) provides that, if a class is certified under Rule 23(b)(3), the judgment must “include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.” The relevant part of the judgment in this case states only that “final judgment is entered on Plaintiffs’ claim under Section 2 of the Sherman Act and related state law claims.” D. Ct. Dkt. 559, at 3 (Mar. 22, 2024). It thus does not strictly comply with Rule 23(c)(3).

Under Rule 60(a), a district court “may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment.” While an appeal is pending, a district court may do so only “with the appellate court’s leave.” Fed. R. Civ. P. 60(a). Courts have treated the failure to comply with Rule 23(c)(3) as a mistake subject to correction under Rule 60(a). *See, e.g., Vaughtner v. Eastern Air Lines, Inc.*, 817 F.2d 685, 688-691 (11th Cir. 1987).

The parties in this case respectfully request that the Court grant a limited remand to correct the judgment under Rule 60(a). No party will be prejudiced, and a remand would not require a change in the briefing schedule.

Respectfully submitted,

/s/ Rio Pierce

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**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I hereby certify, pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A), 32(c)(1), and 32(a)(6) that the attached motion is proportionately spaced, has a typeface of 14 points or more, and contains 289 words.

JULY 22, 2024

/s/ Kannon K. Shanmugam
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